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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 GABRIEL O. OGUNDELE,) NO. CV 06-06152-MAN
12 Plaintiff,)
13 v.) MEMORANDUM OPINION
14 MICHAEL J. ASTRUE,) AND ORDER
15 Commissioner of the)
16 Social Security Administration,)
17 Defendant.)

18 Plaintiff filed a Complaint on September 29, 2006, seeking review
19 of the denial by the Social Security Commissioner ("Commissioner")¹ of
20 Plaintiff's claims for disability insurance benefits ("DIB") and
21 supplemental security income ("SSI"). On October 27, 2006, the parties
22 consented to proceed before the undersigned United States Magistrate
23 Judge, pursuant to 28 U.S.C. § 636(c). The parties filed a Joint
24 Stipulation on April 30, 2007, in which: Plaintiff seeks an order

25
26 ¹ Michael J. Astrue became the Commissioner of the Social
27 Security Administration on February 12, 2007. Pursuant to Rule 25(d)(1)
28 of the Federal Rules of Civil Procedure, Michael Astrue should be
substituted in place of Commissioner Joanne B. Barnhart as the Defendant
in this action. No further action need be taken to continue this suit
by reason of the last sentence of Section 205(g) of the Social Security
Act, 42 U.S.C. § 405(g).

1 reversing the Commissioner's decision and remanding the case for further
2 proceedings; and Defendant requests that the Commissioner's decision be
3 affirmed. The Court has taken the parties' Joint Stipulation under
4 submission without oral argument.

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6 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

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8 Plaintiff filed his application for DIB and SSI on March 12, 2004.
9 (Administrative Record ("A.R.") 21, 212.) Plaintiff claims to have been
10 disabled since March 12, 2002, due to diabetes, hypertension, memory
11 loss, and mental disturbance. (A.R. 21, 70, 83, 88, 203, 212.) He has
12 past relevant work experience as, *inter alia*, a security guard. (A.R.
13 22, 89, 97- 104, 225.)

14
15 The Commissioner denied Plaintiff's claim initially and upon
16 reconsideration. On June 20, 2005, Plaintiff, who was represented by
17 counsel, testified at a hearing before Administrative Law Judge Walter
18 Fisher ("ALJ"). (A.R. 637-69.) On December 27, 2005, the ALJ denied
19 Plaintiff's claim, and the Appeals Council subsequently denied
20 Plaintiff's request for review of the ALJ's decision. (A.R. 8-10, 21-
21 26.)

22
23 **SUMMARY OF ADMINISTRATIVE DECISION**

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25 In his December 27, 2005 written decision, the ALJ found that
26 Plaintiff did not engage in substantial gainful activity during the
27 period at issue. (A.R. 22.) The ALJ determined that Plaintiff has
28 severe impairments consisting of diabetes and hypertension, but that

1 Plaintiff does not have an impairment or combination of impairments
2 listed in, or medically equal to an impairment listed in Appendix 1,
3 Subpart P, Regulations No. 4. (A.R. 23.) The ALJ concluded that
4 Plaintiff did not have "any significantly limiting mental impairment."
5 (A.R. 23.) Further, the ALJ found that inconsistencies in both
6 Plaintiff's work history and educational background, as well as
7 references in the record to his non-compliance with prescribed
8 medications and multiple arrests for DUI and assault on police officers,
9 undermined his credibility. (A.R. 24.)

10
11 Based on a June 16, 2004 state agency assessment (A.R. 297-306),
12 which itself was based on a May 3, 2004 consultative examination and
13 opinion by Ursula Taylor, M.D. (A.R. 290), the ALJ determined that
14 Plaintiff: could lift 25 pounds frequently and 50 pounds occasionally;
15 could sit, stand, and walk six hours in an eight-hour workday; was
16 unable to perform repetitive bending and stooping; was unable to work in
17 especially hazardous settings, such as work at unprotected heights or
18 near dangerous machinery; and was unable to work in environments with
19 vibrating tools. (A.R. 24-25.) Based on this physical residual
20 functional capacity finding, the ALJ found that Plaintiff was able to
21 return to his past relevant work as a security guard. (A.R. 25-26.)
22 Accordingly, the ALJ concluded that the Plaintiff was not disabled
23 within the meaning of the Social Security Act during the time period at
24 issue. (*Id.*)

25 26 STANDARD OF REVIEW

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28 This Court reviews the Commissioner's decision to determine

1 whether it is free from legal error and supported by substantial
2 evidence. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996). The
3 Commissioner's decision must stand if it is supported by substantial
4 evidence and applies the appropriate legal standards. Saelee v. Chater,
5 94 F.3d 520, 521 (9th Cir. 1996). Substantial evidence is "more than a
6 mere scintilla but less than a preponderance -- it is such relevant
7 evidence that a reasonable mind might accept as adequate to support the
8 conclusion." Moncada v. Chater, 60 F.3d 521, 523 (9th Cir. 1995).

9
10 Although this Court cannot substitute its discretion for that of
11 the Commissioner, this Court nonetheless must review the record as a
12 whole, "weighing both the evidence that supports and the evidence that
13 detracts from the [Commissioner's] conclusion." Desrosiers v. Sec'y. of
14 Health and Human Serv., 846 F.2d 573, 576 (9th Cir. 1988); see also
15 Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). "The ALJ is
16 responsible for determining credibility, resolving conflicts in medical
17 testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d
18 1035, 1039-40 (9th Cir. 1995). This Court must uphold the
19 Commissioner's decision if it is supported by substantial evidence and
20 free from legal error, even when the record reasonably supports more
21 than one rational interpretation of the evidence. *Id.* at 1041; see also
22 Morgan v. Comm'r. of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.
23 1999); Flaten v. Secretary, 44 F.3d 1453, 1457 (9th Cir. 1995).

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DISCUSSION

Plaintiff alleges that the ALJ failed to develop the record and evaluate his mental impairment properly. (Joint Stipulation ("J.S.") 3.)

A. The ALJ Committed Error At Step Two, And Failed To Adequately Develop The Record, Regarding Plaintiff's Mental Impairment.

Two well-established principles guide this Court's review of Plaintiff's claim. First, the requirement, at Step Two of the sequential analysis for social security claims, that an impairment be severe is merely "a *de minimis* screening device to dispose of groundless claims." Edlund v. Massanari, 253 F.3d 1152, 1158 (9th Cir. 2001). "An impairment or combination of impairments can be found 'not severe' only if the evidence establishes a slight abnormality that has 'no more than a minimal effect on [a claimant's] ability to work.'" Smolen, 80 F.3d at 1290 (citation omitted); see also 20 C.F.R. §§ 404.1521(a) and 416.921(a) ("[a]n impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.") A claim may be denied at Step Two only if a finding that the relevant impairments are not medically severe is "clearly established by medical evidence." Social Security Ruling 85-28 (emphasis added).

Second, the Commissioner has an affirmative duty to develop the record, even when the claimant is represented by counsel. Brown v. Heckler, 713 F.2d 441, 442-43 (9th Cir. 1993). "In cases of mental

1 impairments, this duty is especially important." DeLorme v. Sullivan,
2 924 F.2d 841, 849 (9th Cir. 1990); see also Tonapetyan v. Halter, 242
3 F.3d 1144, 1150 (9th Cir. 2001) (ALJ has a heightened duty to develop the
4 record where the claimant is mentally ill and therefore unable to
5 protect her own interests); Higbee v. Sullivan, 975 F.2d 558, 561-62
6 (9th Cir. 1992). The ALJ's duty to develop the record extends from the
7 basic premise that Social Security hearings are not adversarial in
8 nature. Orcutt v. Barnhart, 2005 WL 2387702, *3 (C.D. Cal. 2005); see
9 also Sims v. Apfel, 530 U.S. 103, 111, 120 S. Ct. 2080, 2085 (2000) ("It
10 is the ALJ's duty to investigate the facts and develop the arguments
11 both for and against granting benefits"); 20 C.F.R. §§ 404.944 and
12 416.1444 (at the Administrative Hearing, the ALJ "looks fully into the
13 issues").

14
15 Turning to the pertinent record here, on May 10, 2004, a consulting
16 psychiatrist, Nathan Lavid, M.D., performed a psychiatric evaluation of
17 Plaintiff. (A.R. 292-96.) In his report, Dr. Lavid noted that
18 Plaintiff reported he was receiving psychiatric treatment. (A.R. 295.)
19 Dr. Lavid diagnosed Plaintiff with alcohol dependence and depression not
20 otherwise specified, but concluded that Plaintiff: is "without evidence
21 of cognitive deficits, perceptual disturbances or delusion disorders";
22 and "would have no limitations from a psychiatric standpoint" if he
23 stopped drinking. (A.R. 294-95.)

24
25 On June 24, 2004, a state agency physician, Dr. Stone, prepared a
26 Psychiatric Review Technique form, a check-the-box document, which was
27 predicated on Dr. Lavid's May 10, 2004 consultative report. (A.R. 307-
28 20; see especially A.R. 319.) Dr. Stone noted that Plaintiff has a

1 medically determinable impairment of depression, but checked the box
2 indicating that this impairment did not satisfy the criteria for
3 "affective disorders" constituting "severe" mental impairments. (A.R.
4 310.) Dr. Stone also checked the box indicating that Plaintiff has a
5 substance addiction disorder. (A.R. 315.) The state agency physician's
6 "opinion" relevant to the ALJ's Step Two determination consisted simply
7 of a box checked to indicate that Plaintiff's depression and substance
8 addiction disorders did not constitute a severe mental impairment.
9 (A.R. 307.)

10
11 Dr. Lavid's May 2004 consultative psychiatric examination and Dr.
12 Stone's June 2004 state agency assessment were a part of the
13 administrative record before the ALJ. In addition, the record contained
14 Plaintiff's records of mental health treatment at Augustus F. Hawkins
15 Mental Health Center from May 13, 2004, through July 15, 2004 (the
16 "Augustus Hawkins records"). (A.R. 395-412.)

17
18 The Augustus Hawkins records reflect that Plaintiff's mental health
19 treatment at Augustus Hawkins began on May 14, 2004. (A.R. 400-12.)
20 Plaintiff's psychological history is described as including two suicide
21 attempts involving overdosing in the year preceding the commencement of
22 his treatment. (A.R. 408.) At the time Plaintiff began treatment, he
23 complained of sleeplessness, depression, tearfulness, decreased
24 appetite, weight loss, fatigue, psychomotor retardation, poor
25 concentration, and decreased interest and pleasure in life in general.
26 (*Id.*) Additionally, Plaintiff reported hearing his dead son talking to
27 him. (A.R. 402.) A mental status evaluation at that time revealed that
28 Plaintiff made erratic eye contact and exhibited: slurred speech;

1 impaired memory; below average fund of knowledge; dysphoria, tearful,
2 and anxious mood; constricted affect; assaultive ideas; numerous
3 behavioral disturbances; poor "Serial 7's"; impaired concentration; and
4 passive features. (A.R. 411.) The assessing Augustus Hawkins
5 psychologist found a Global Assessment of Functioning score ("GAF") of
6 50.² (A.R. 412.) Plaintiff was primarily diagnosed as having major
7 depressive disorder, recurrent, severe with psychotic features, with a
8 secondary diagnosis of alcohol dependence. (*Id.*)

9
10 Subsequent visits to Augustus Hawkins for mental health treatment,
11 in June and July 2004, are also documented. (A.R. 396-99.) On July 14,
12 2004, the last treatment documentation of record, treatment notes reveal
13 complaints consistent with the initial diagnosis, including
14 sleeplessness, depressed tearful mood, poor appetite, weight loss,
15 hearing voices, and, notably, paranoidal/persecutory-type delusions.
16 (A.R. 396.)

17
18 In the course of his treatment at Augustus Hawkins, Plaintiff was
19 prescribed anti-depressant and anti-psychotic medications, including
20 Paxil, Trazadone, and Seroquel. (A.R. 397-98, 400.) Throughout his
21 treatment at Augustus Hawkins, Plaintiff complied with his prescribed

22
23 ² A GAF score of 50 indicates "serious symptoms (e.g. suicidal
24 ideation, severe obsessive rituals, frequent shoplifting) or any serious
25 impairment in social, occupational, or school functioning (e.g. no
26 friends, unable to keep a job)." Diagnostic and Statistical Manual of
27 Mental Disorders Text Revision, 34 (4th ed. 2000) ("DSM-IV-TR");
28 see also Boyd v. Apfel, 239 F.3d 698, 702 (5th Cir. 2001) (GAF rating of
50 or below indicates the presence of serious symptoms among which may
include the inability to work). This denotes a significant difference
in functioning from that found by Dr. Lavid in his consultative
examination, at which Plaintiff was assessed a GAF of 65. (A.R. 295.)
A GAF score of 61-70 indicates only "some mild symptoms" and a general
ability to function well. DSM-IV-TR, 34.

1 medication dosage. (A.R. 397-401.)

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3 Neither Dr. Lavid nor Dr. Stone appear to have had before them, or
4 been aware of, any of the Augustus Hawkins records. (A.R. 292-96, 307-
5 20.)

6
7 The hearing before the ALJ took place on June 20, 2005. (A.R.
8 637.) Plaintiff's attorney questioned Plaintiff about his mental health
9 problems and treatment. (A.R. 651-56.) Plaintiff testified that he was
10 then being treated for mental health problems, was depressed, and heard
11 voices that precluded sleep. He also stated that he cannot tolerate
12 "too much noise" or crowds, and he would try to escape them. (A.R. 651-
13 54, 656.) Plaintiff's attorney noted for the record that the Augustus
14 Hawkins records documented Plaintiff's claim of hearing voices. (A.R.
15 653.) Additionally, Plaintiff testified that he quit drinking in March
16 2004, and had been attending AA meetings daily since that time. (A.R.
17 651-52). Plaintiff also stated that he was unable to work, because he
18 frequently visits the hospital for treatment. (A.R. 655-56)

19
20 In his decision, the ALJ summarily dismissed the Augustus Hawkins
21 records on the ground that they showed "only fleeting mental health
22 treatment." (A.R. 23.) The ALJ also gave short shrift to Plaintiff's
23 claimed mental impairment, finding it was not "severe," at Step Two,
24 based on the following reasoning:

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26 [I]n an assessment dated June 2004, a State Agency
27 psychiatrist opines that even in consideration of the
28 claimant's ongoing alcohol abuse, the medical evidence of

1 record does not document significant and persistently limiting
2 mental impairment (Exhibit B5F).

3
4 Also notable, the report of a May 2004 psychiatric
5 consultative examination relates the claimant's admission that
6 he drinks daily. However, a concurrent mental status
7 examination shows little objective evidence of impairment,
8 including adequate memory and concentration, as well as an
9 absence of hallucinations. And the examiner comments, "The
10 mental status examination today revealed the patient
11 demonstrating extremely poor judgment by drinking on a daily
12 basis when he understands that drinking can exacerbate his
13 emotional complaints. The patient was otherwise without
14 evidence of cognitive deficits, perceptual disturbances or
15 delusion disorders at this time." (Exhibit B3F/4)

16
17 (A.R. 23.)

18
19 The ALJ's outright dismissal of the Augustus Hawkins treating
20 records without considering their substance, and reliance principally on
21 Dr. Stone's state agency assessment, as well as on Dr. Lavid's earlier
22 consultative report, constitutes error for several reasons. First, the
23 ALJ's characterization of the Augustus Hawkins records as showing only
24 "fleeting" treatment is plainly inaccurate, particularly in light of
25 Plaintiff's testimony at the June 2005 hearing that he still was
26 undergoing mental health treatment. Such mischaracterization of the
27 record is improper. See Gallant v. Heckler, 753 F.2d 1450, 1456 (9th
28 Cir. 1984) (holding that it was error for an ALJ to ignore or misstate

1 competent evidence in the record in order to justify his conclusion).
2

3 Second, the ALJ's dismissal of the treating psychological records,
4 without any discussion of their substance, violated the cardinal rule
5 governing the Commissioner's consideration of treating physician
6 opinions -- namely, even if the opinion of a treating physician is
7 contradicted by other medical evidence of record, it may be rejected by
8 the ALJ only for "specific and legitimate" reasons, based on substantial
9 evidence in the record. See, e.g., Widmark v. Barnhart, 454 F.3d 1063,
10 1066-67 (9th Cir. 2006); Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
11 1995); Magallanes v. Brown, 881 F.2d 747, 751 (9th Cir. 1989). For the
12 reasons noted above, the ALJ's characterization of the Augustus Hawkins
13 records as showing only "fleeting" treatment was not legitimate, and
14 thus, it was not an appropriate basis for failing to consider and reject
15 the opinions of Plaintiff's treating psychologists at Augustus Hawkins.
16 The ALJ failed to state any specific reason for rejecting those treating
17 opinions and, instead, simply deferred to the May 2004 and June 2004
18 opinions of the consultative examiner and the state agency physician.
19 While a non-treating physician's opinion may constitute substantial
20 evidence if it is based on independent, clinical findings,³ the ALJ
21 nonetheless was required to state specific and legitimate reasons for
22

23 ³ See, e.g., Tonapetyan, 242 F.3d at 1149; Magallanes, 881 F.2d
24 at 752.

25 The Court notes that Dr. Stone's state agency opinion appears
26 to have been based entirely on Dr. Lavid's consultative opinion, the
27 only medical/psychiatric record identified by the state agency examiner.
28 (A.R. 319.) Accordingly, the ALJ's indication that he relied on two
medical opinions to support his Step Two finding that Plaintiff's
claimed mental impairment was not severe is misleading, as the only
clinical findings supporting his conclusion were those made by Dr.
Lavid.

1 rejecting the treating opinions set forth in the Augustus Hawkins
2 records and relying instead on the conflicting opinion of Dr. Lavid (as
3 incorporated into Dr. Stone's assessment). Moreover, and critically,
4 neither Dr. Lavid nor Dr. Stone reviewed the Augustus Hawkins records.
5 Hence, neither the consulting nor the state agency physician opinion can
6 be said to rest on a complete picture of Plaintiff's mental health
7 status.

8
9 Third, the ALJ's conclusory rejection of Plaintiff's claimed mental
10 impairment was inconsistent with the above-described standards that
11 govern the Commissioner's review at Step Two. The Augustus Hawkins
12 records establish that Plaintiff's mental impairment had more than a
13 minimal effect on his ability to work, if they are credited. The ALJ
14 failed to consider them, however, and his rejection of the records
15 summarily was ineffective to establish that they should not be
16 considered. Accordingly, substantial evidence does not support the
17 ALJ's Step Two conclusion that the Plaintiff's claimed mental impairment
18 was non-severe.

19
20 In addition, the ALJ's duty to develop the record was triggered
21 when Plaintiff testified that he currently was receiving mental health
22 treatment. (A.R. 651.) Although the record at the time of the decision
23 included Augustus Hawkins treatment notes from May 2004 through July
24 2004, that sworn testimony indicated that additional material, treatment
25 records existed and, therefore, should have been considered and
26 incorporated into the record. While it is the Plaintiff's
27 responsibility to prove disability, "in Social Security cases the ALJ
28 has a special duty to fully and fairly develop the record and to assure

1 that the claimant's interests are considered." Smolen, 80 F.3d at 1288
2 (quoting Brown, 713 F.2d at 443). Consequently, the ALJ failed in his
3 duty "to scrupulously and conscientiously probe into, inquire of, and
4 explore all the relevant facts" by not procuring the additional,
5 relevant treatment records, once he was made aware that the Plaintiff
6 continued to receive mental health care. Higbee, 975 F.2d at 561.

7
8 Defendant argues that the ALJ fulfilled his duty by obtaining a
9 psychiatric consultative examination, and that the consultant's
10 independent clinical findings constituted substantial evidence
11 supporting the ALJ's determination. (J.S. at 6-7.) However, as
12 Plaintiff points out, there is a year-long evidentiary gap between Dr.
13 Lavid's consultative examination and the administrative hearing. (J.S.
14 at 5.) Moreover, Dr. Lavid's examination occurred prior to the
15 Plaintiff's diagnosis and treatment at Augustus Hawkins. Given that Dr.
16 Stone's state agency assessment rests only on Dr. Lavid's opinion, that
17 state agency assessment suffered from these same flaws.

18
19 Further, the treatment records from August 2004, up to the time of
20 the June 2005 hearing were material to the assessment of Plaintiff's
21 mental condition, particularly if Plaintiff's condition had worsened
22 during that period. When a claimant's condition is progressively
23 deteriorating, the most recent medical records are the most probative.
24 Stone v. Heckler, 761 F.2d 530, 532 (9th Cir. 1985) (holding that earlier
25 medical evaluations do not constitute substantial evidence to reject a
26 treating physician's opinion, when condition is degenerative);
27 Magallanes, 881 F.2d at 754-55 ("[w]here a claimant's condition becomes
28 progressively worse, medical reports from an early phase of the disease

1 are likely to be less probative than later reports"). It therefore is
2 critical that the record be developed and the evidentiary gap filled.

3
4 An ALJ can discharge his or her duty to develop the record "in
5 several ways, including: subpoenaing the claimant's physicians,
6 submitting questions to the claimant's physicians, continuing the
7 hearing, or keeping the record open after the hearing to allow
8 supplementation of the record." Tonapetyan, 242 F.3d at 1150; see also
9 Smolen, 80 F.3d at 1288. Defendant argues that the ALJ fulfilled his
10 duty by leaving the record open for supplementation after the hearing.
11 (J.S. at 8, citing A.R. 669.) In fact, the transcript indicates that
12 the record was left open only for the submission of medical records from
13 H. Claude Hudson to clarify a physical limitation, not to obtain further
14 records regarding Plaintiff's mental impairment. (A.R. 668-69.) From
15 the evidence of record, it is clear that the ALJ made no effort to
16 ascertain the extent of Plaintiff's mental impairment following the
17 hearing. As a result, the ALJ failed to fully and fairly develop the
18 record regarding Plaintiff's mental impairment.⁴

19
20 ⁴ Allegations of Plaintiff's alcohol abuse may be addressed
21 following the development of the record. However, the ALJ must first
22 conduct the five-step sequential evaluation "without separating out the
23 impact of alcoholism or drug addiction." Bustamante v. Massanari, 262
24 F.3d 949, 955 (9th Cir. 2001). If, following this inquiry, there is a
25 finding of disability, the ALJ must perform a two-step analysis to
26 determine whether the substance abuse is a contributing factor to the
27 disability. 20 C.F.R. §§ 404.1535(a) and 416.935(a). First, the ALJ
28 must evaluate which of Plaintiff's current mental and physical
limitations would persist if he stopped using drugs or alcohol. 20
C.F.R. §§ 404.1535(b)(2) and 416.935(b)(2). Second, the ALJ must
determine whether Plaintiff's remaining limitations would be considered
disabling. 20 C.F.R. §§ 404.1535(b)(2) and 416.935(b)(2). An ALJ may
not conclude that substance abuse is a contributing factor material to
the determination of disability without distinguishing between the
substance abuse contributing to the disability and the disability
remaining if the claimant refrained from the drug and alcohol use.

1 For the foregoing reasons, the ALJ's rejection of Plaintiff's
2 claimed mental impairment at the Step Two level was error. Accordingly,
3 the ALJ's decision regarding Plaintiff's claimed mental impairment is
4 reversed.

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6 **B. Remand Is Required.**

7
8 Here, remand is appropriate to allow the ALJ the opportunity to
9 correct the above errors. See, e.g., Benecke v. Barnhart, 379 F.3d 587,
10 593 (9th Cir. 2004) (where ALJ erred by discounting treating physicians'
11 opinions, remand for further proceedings is appropriate if enhancement
12 of the record would be useful); Higbee, 975 F.2d at 561-62 (remanding
13 case in order to develop the record); McAllister v. Sullivan, 888 F.2d
14 599, 603 (9th Cir. 1989) (remand appropriate to remedy defects in the
15 record).

16
17 **CONCLUSION**

18
19 Accordingly, for the reasons stated above, the denial of benefits
20 is REVERSED, and this case is REMANDED for further proceedings
21 consistent with this Memorandum Opinion and Order. Judgment shall be
22 entered reversing the decision of the Commissioner, and remanding the
23 matter for further administrative action consistent with this Memorandum
24 Opinion and Order.

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26
27 Sousa v. Callahan, 143 F.3d 1240, 1245 (9th Cir. 1998) (reversing and
28 remanding case to determine whether claimant's disability would have
continued if she stopped using drugs and alcohol).

1 IT IS FURTHER ORDERED that the Clerk of the Court shall serve
2 copies of this Memorandum Opinion and Order and the Judgment on counsel
3 for Plaintiff and for Defendant.

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5 LET JUDGMENT BE ENTERED ACCORDINGLY.

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7 DATED: May 21, 2008

8 /s/
MARGARET A. NAGLE
9 UNITED STATES MAGISTRATE JUDGE
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